

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 04 January 2007

CASE NO.: 2006-ERA-00016

IN THE MATTER OF:

MALCOLM A. KENNETT,
Complainant,

v.

NUCLEAR MANAGEMENT COMPANY, LLC,
Respondent.

RECOMMENDED

**(1) APPROVAL OF SETTLEMENT AGREEMENT, (2) ORDER OF DISMISSAL WITH
PREJUDICE, AND (3) CONFIDENTIAL TREATMENT OF SETTLEMENT
AGREEMENT**

This proceeding arises under the Energy Reorganization Act (ERA) of 1974, 42 U.S.C. A. §5851. Any action brought under these statutes is governed by the rules and procedures set forth in 29 C.F.R. Part 24. On June 1, 2006, the Complainant filed objections to the Secretary's Findings dated May 30, 2006. The ERA requires expeditious processing of cases filed under this Act. On June 13, 2006, I held a pre-hearing telephone conference to discuss pre-hearing matters and to schedule the hearing. The Complainant was represented by Ms. Billie Garde, and the Respondent was represented by Mr. Kelly Baier.

The parties agreed that the trial would begin on Monday, January 22, 2007, and continue through that week. The hearing was set to be held in Sheboygan, WI.

On November 27, 2006, I received a November 27, 2006 letter (by fax) stating the parties had agreed to settle this case and were in the process of drafting the settlement documents. I approved their request to hold all case deadlines in abeyance until the Settlement Agreement could be finalized.

On December 14, 2006, I received a Confidential Settlement Agreement, Waiver and General Release. By a cover letter dated December 12, 2006, the parties stated that they jointly requested "that the Agreement be withheld from public disclosure pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b); 29 C.F.R. 70.3, as it contains confidential financial and personal information."

In ERA cases, when parties file a request for dismissal, an ALJ must review the settlement and make a recommendation of whether the settlement is fair, adequate and reasonable. *Hoffman v. Fuel Economy Contracting*, 87-ERA-33 at 4 (Sec'y Aug 4, 1989) (citing *Fuchko and Yunker v. Georgia Power Co.*, 89-ERA-9 and 10, (Sec'y Mar. 23, 1989)). Under 29 C.F.R. § 24.6 of the regulations implementing the ERA, an ALJ is authorized to issue only a recommended decision, which must be reviewed by the Secretary before it becomes final. See 42 U.S.C. § 5851(b)(2)(A). The Secretary has repeatedly held that an ERA case cannot be dismissed on the basis of a settlement "unless the Secretary finds that the settlement is fair, adequate and reasonable." *Hoffman*, 87-ERA-33 at 3 (citing *Fuchko and Yunker*, 89-ERA-9 and 10, Secretary's Order to Submit Settlement Agreement issued March 23, 1989, at 2.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. The settlement must adequately protect the whistleblower. Furthermore, the settlement must not be contrary to the public interest.

I note that the parties are represented by counsel. The parties agree to confidentiality of the agreed terms of the settlement and agree not to disclose information to third parties regarding the terms of the settlement, except as required by law.

After careful consideration of the settlement agreement, I find the terms of the agreement are fair, adequate, reasonable, and adequately protect the Complainant. I further find that it is in the public interest to adopt the agreement as a basis for the administrative disposition of this case.

By signing the Settlement Agreement, the parties have demonstrated their intent to keep the Settlement Agreement confidential. In the Agreement, they agree to "maintain this Agreement and the terms of this Agreement in the strictest confidence to the fullest extent permitted by law" The final determination of whether any information from this Settlement Agreement is released due to a FOIA request will be determined after any request is received and in accordance with the FOIA and 29 C.F.R. Part 70, including § 70.26. The settlement agreement will remain confidential insofar as provided by law. Pursuant to 29 C.F.R. § 18.56, the Settlement Agreement will be maintained within a "restricted access" portion of the record.

RECOMMENDED ORDER

Upon consideration of the foregoing,

IT IS HEREBY ORDERED, the Settlement Agreement will remain confidential insofar as provided by law. Pursuant to 29 C.F.R. § 18.56, the Settlement Agreement and exhibits will be maintained within a "restricted access" portion of the record. The complaint filed by the Complainant in this matter shall be **DISMISSED WITH PREJUDICE**.

A

WILLIAM S. COLWELL
Administrative Law Judge

Washington, D.C.
WSC:pah

NOTICE OF REVIEW:

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§ 24.7(d) and 24.8.